

ASSEMBLY BILL

No. 838

Introduced by Assembly Member Spitzer

February 20, 2003

An act to add Section 57386 to the Government Code, relating to local agency formation.

LEGISLATIVE COUNSEL'S DIGEST

AB 838, as introduced, Spitzer. Newly incorporated cities: land use.

Existing law requires the city council of a newly incorporated city to adopt an ordinance making all county ordinances previously applicable, to remain in full force and effect as city ordinances for a period of 120 days after incorporation, or until the city council has enacted ordinances superseding the county ordinances, whichever occurs first, except as specified.

This bill would require, upon the effective date of the incorporation of any city occurring on or after January 1, 1999, that any restriction or covenant contained in a written instrument entered into relating to real property within the boundaries of the city that purports to regulate design or development standards, requirements, or conditions on the development, use, or occupancy of any commercial or industrial property is superseded, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares of all of the
2 following:

3 (a) It is the intent of the Legislature that newly incorporated
4 cities be provided the broadest possible opportunity to establish
5 and implement general plan policies, local zoning regulations, and
6 building and construction requirements necessary or desirable for
7 the local communities these cities serve while also preserving
8 private property rights.

9 (b) Restrictions and covenants predating incorporation that
10 operate to limit use and regulate development standards for
11 commercial and industrial property frustrate the ability of newly
12 incorporated cities to establish and implement communitywide,
13 uniform, and consistent land use and building and construction
14 policies, regulations, and requirements. These restrictions and
15 covenants also serve to unreasonably restrict opportunities for full
16 and free competition among business enterprises that are
17 necessary for the continued financial viability of newly
18 incorporated cities.

19 (c) It is the public policy of this state that the incorporation of
20 a new city constitutes a significant changed circumstance and
21 significant societal interest that supports a determination that
22 certain private land use restrictions and covenants be superseded
23 to the extent that these restrictions and covenants are in conflict
24 with the new city's general plan policies, local zoning regulations,
25 or building and construction requirements.

26 SEC. 2. Section 57386 is added to the Government Code, to
27 read:

28 57386. Upon the effective date of the incorporation of any city
29 occurring on or after January 1, 1999, any restriction or covenant
30 contained in a written instrument entered into relating to real
31 property within the boundaries of the city that purports to regulate
32 design or development standards, requirements, or conditions on
33 the development, use, or occupancy of any commercial or
34 industrial property are superseded to the extent they are
35 inconsistent or in conflict with any city general plan policies, local
36 zoning regulations, or building and construction requirements.

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